

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NUTRIEN AG SOLUTIONS, INC.,)

)

Plaintiff,)

)

v.)

CASE NO. 2:19-CV-614-WKW

)

[WO]

FRANKLIN BRUCE SIMMONS, III,)

)

Defendant.)

ORDER

Before the court is Defendant's motion to extend the briefing schedule for Plaintiff's motion for summary judgment and to permit the deposition of Dr. Jenny Koebernick. (Doc. # 39.) Defendant's motion is brought under Rule 56(d) of the Federal Rules of Civil Procedure.

On April 20, 2021, the court issued a scheduling order. (Doc. # 27.) In the scheduling order, the court ordered Plaintiff to disclose all expert reports to Defendant on or before June 18, 2021. (Doc. # 27 at 2.) All discovery, including deposition of these experts, was ordered to be concluded on or before August 17, 2021. However, this discovery cutoff was later extended to February 25, 2022. (Doc. # 31 at 2.)

After the close of discovery, Plaintiff filed a timely motion for summary judgment. (Doc. # 37.) In support of its motion, Plaintiff attached the affidavit and

report of Dr. Jenny Koebernick, an assistant professor in the College of Agriculture at Auburn University. (Doc. # 38-8.)

Defendant, one day before the deadline to respond to the motion for summary judgment, moves to postpone briefing on the motion in order to depose Dr. Koebernick. Defendant states that “there are several . . . deficiencies in the expert report of Dr. Koebernick that will need to be tested by cross-examination.” (Doc. # 39.) But Defendant does not state when he first received Dr. Koebernick’s report, nor that a deposition was impossible or impracticable within the deadlines set in the court’s scheduling order.

When a deadline has been set by court order, it can be modified only for good cause. Fed. R. Civ. P. 16(b)(4); *S. Grouts & Mortars, Inc. v. 3M Co.*, 575 F.3d 1235, 1241 (11th Cir. 2009). Good cause has not been shown. Accordingly, it is ORDERED that Defendant’s motion (Doc. # 39) is DENIED.

However, notwithstanding the lack of merit for Defendant’s motion, a short extension for filing a response to the summary judgment motion will be allowed. Accordingly, it is ORDERED that that the deadline for a response is EXTENDED to and including **April 18, 2022**.

DONE this 14th day of April, 2022.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE